

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6878 of 1985

Date of decision: 3-12-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MIRSAB ABDULLAMIYA SAIYAD

Appearance:

Mr. S. M. Mazgaonkar for Petitioner
None present for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/12/97

ORAL JUDGEMENT

Challenge has been made by the petitioner to the award of the Labour Court, Ahmedabad, dated 6-3-1985 in Reference (LCA) No.345 of 1980 under which the dismissal of the respondent workman from service from 22-11-1979 has been declared illegal; and the petitioner Corporation has been directed to reinstate the respondent workman in service on his original post of stenographer with continuity of service and full back wages.

2. Service of the respondent workman has been terminated on the ground of alleged misconduct of remaining absent from duty for the period 4-1-1978 to 14-1-1978, 14-6-1978 to 18-6-1978 and 9-10-1978 to 10-10-1978.

3. Learned counsel for the petitioner contended that the Labour Court has found that the inquiry which has been held against the respondent workman is legal and proper, and after accepting the enquiry to be legal and proper it has no jurisdiction to probe into the correctness of the findings recorded by the Inquiry Officer. The Labour Court could have gone into the question as to what punishment should have been given to the respondent workman. It has next been contended that it is a case of unlawful absence by respondent workman, and if punishment of dismissal from service is considered too harsh or excessive, then there was no justification to award full backwages and set him free without any punishment whatsoever.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. In the inquiry conducted by the petitioner against respondent workman if the alleged misconduct of absence from duty without prior sanction of leave is held to be legal and proper by the Labour Court, I fail to see any substance in the contention of the learned counsel for the petitioner that after recording this finding the Labour Court has no jurisdiction to go into the question whether the finding recorded by the Inquiry Officer is sustainable or not. The Labour Court, under section 11A of the Industrial Disputes Act, 1947 has all the powers to see whether the finding recorded by the inquiry officer could have been recorded on the basis of the evidence produced by the authorities. In the present case the Labour Court found to the effect that it is not the case of the Corporation that the respondent workman has remained absent without just and proper cause, or that the ground of sickness stated by him was false and fabricated.

5. After going through the record of the case, the Labour Court has recorded the finding of fact that absence of the workman was justified on medical ground. The Labour Court further noticed that it is expected of the Corporation to issue proper memo to the respondent workman on each occasion of absence . So after taking into consideration the totality of the facts of the case the Labour Court has not found it to be a case of willful or deliberate absence. It was found to be only a case where prior sanction of leave has not been obtained. The important question for consideration before the Labour Court was whether there was just and reasonable cause for absence of the concerned workman or not; and the Labour Court has found that the absence of respondent workman was on the ground of his illness. In presence of these findings, it can not be said that the Labour Court has committed any illegality and the judgment and order of the Labour court is perverse.

6. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

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